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DECISION



*Humes
P.L. II*

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20540**

FILE: B-190828

DATE: December 13, 1977

MATTER OF: Jack E. Kessner Construction
Lee C. Nelson, Inc.

DIGEST:

Requests for review of procurement funded by Federal grant involving 10 percent minority business enterprise requirement mandated by Public Works Employment Act of 1977, which requirement is subject of conflicting U.S. District Court opinions and other pending litigation, will not be considered until litigation is finally resolved.

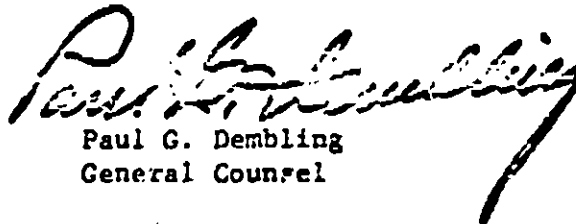
Jack E. Kessner Construction and Lee C. Nelson, Inc. request review of the award by the Great Falls (Montana) Public Schools of a construction contract financed by a grant from the Economic Development Administration, U.S. Department of Commerce.

The bids submitted by the two firms were rejected because of non-compliance with a requirement, mandated by section 106(f)(2) of the Local Public Works Capital Development and Investment Act of 1976, as amended by the Public Works Employment Act of 1977, Public Law 95-25, that bidders have 10 percent of a federally funded project performed by a Minority Business Enterprise (MBE). The firms contend that the requirement "discriminated against * * * all nonminority business enterprises" and the rejection of their bids was "racially discriminative."

The MBE provision of the 1977 act has been the subject of conflicting United States District Court opinions. See Associated General Contractors of California v. Secretary of Commerce, U.S. District Court for the Central District of California, Civil Action No. 77-3738-AAH, October 31, 1977, and Constructors Association of Western Pennsylvania v. Kreps, U.S. District Court for the Western District of Pennsylvania, Civil Action No. 77-1035, October 13, 1977. The California decision has been appealed to the United States Supreme Court.

B-190828

This Office generally will not rule on a matter that is the subject of litigation before a court of competent jurisdiction. Nartron Corporation and DC Electronics, Incorporated, 53 Comp. Gen. 730 (1974), 74-1 CPD 154; KDI Precision Products, Inc., B-180025, May 14, 1974, 74-1 CPD 253. In view thereof, we believe it would be inappropriate for this Office to take any action on the matter until the litigation is finally resolved. Accordingly, the complaints are dismissed.


Paul G. Dembling
General Counsel